IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 5871 OF 2005

Anand Pandurang Shinde/Mane ...Applicant
vs.
State of Maharashtra ...Respondent

Mr.N.N.Patil for the Applicant
Mr.A.S.Gadkari,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : 5th and 6th OCTOBER 2005

P.C.:

1. Heard Advocate for the Applicant and the learned A.P.P. for State. This is an application for bail where the offence registered is under Sections 302, 304, 328, 326, 272, 273 of Indian Penal Code. The offence relates to manufacture and sale of poisonous country made liquor. The case of the prosecution is that by consuming poisonous illicit liquor 86 persons lost their lives and 193 persons were taken seriously ill. The allegation is that Methyl alcohol was mixed with the illicit liquor and that was the cause of death and sickness of several persons. There are 19 accused persons who were booked in the said offence. The allegation against the Applicant seems to be that he was running his own den in which he served poisonous illicit liquor from 24th December 2004 to 26th December 2004 and out of the persons who consumed illicit liquor at his den, one person died and eight others were taken seriously ill. The application for bail made by the Applicant along seven other accused persons before the Sessions court

has been rejected.

2. The main submission made by the Advocate for the Applicant is that there is no material on record to show that the Applicant had knowledge that the liquor served at his den was poisonous. He submitted that even according to the case of the prosecution, the Applicant was not involved in any manner either in manufacture or in transport of poisonous country made liquor. He placed reliance on order passed by this Court in Criminal Application No.2769 of 2005 and other connected applications. The said order of this Court relates to similar offence registered at N.M.Marg Police Station, Mumbai. By a common order, this Court decided the bail applications made by some of the accused in the said offence along with applications made by the State Government for cancellation of bail granted to other accused persons by the Sessions Court. He submitted that the test adopted by this Court while dealing with the said applications is that if the accused had no knowledge regarding poisonous nature of illicit liquor then he is entitled to be enlarged on bail and only those accused persons who were having knowledge about the poisonous nature of the illicit liquor were denied bail. He submitted that going by the stand taken by the prosecution, at highest, the Applicant may be guilty of offences under Bombay Prohibition Act and by no stretch of imagination Sections 302 or 304 of the Indian Penal Code can be applied against the Applicant.

3. The learned A.P.P. submitted that there is enough material on record to show that number of persons consumed poisonous liquor at the den of the Applicant. He submitted that the Applicant was aware about the source from which he was receiving the illicit liquor. He submitted that on 23rd and 24th December 2004 there was a similar liquor tragedy within the limits of N.M.Marg Police Station at Mumbai and therefore, it cannot be said that the Applicant had no knowledge about the possibility of illicit liquor being poisonous. He placed reliance on the decision of the Apex Court reported in (1977) 4 S.C.C. page No.540 (Yash Pal Mittal Vs.State of Punjab) as well as (1996) 4 S.C.C. page 659 (State of Maharashtra and others vs. Som Nath Thapa and others). He submitted that the Applicant is not entitled to be enlarged on bail.

4. I have considered the submissions. There are statements of witnesses who have alleged that they consumed liquor in the den of the Applicant on 24th, 25th and 26th December 2004. There is a statement of one Shivcharan whose statement has been recorded by the police. He stated that he consumed liquor on 25th and 26th December 2004 at the den run by the Applicant and he expired on 28th December 2004 after he was admitted in Rajawadi Hospital on 27th December 2004. Post Mortem report of the deceased describes the final cause of

death as "Methyl alcohol poisoning". There are eight persons whose statements have been recorded in which they have stated that after consuming liquor in the den of the Applicant they were taken ill. The medical certificates of the said persons indicate that Methyl alcohol was present in their stomach wash as well as in the blood. The case of the prosecution is that co-accused Laxmi and her sons purchased poisonous illicit liquor from arrested accused Ramesh Pokharkar and they distributed illicit liquor at various dens.

5. The prosecution has alleged conspiracy. It will be necessary to refer to the decision of the Apex Court in case of Yash Pal Mittal (supra). In paragraph 9 of the said decision, the Apex Court held thus :

"9. The offence of criminal conspiracy under section 120A is a distinct offence introduced for the first time in 1913 in Chapter V-A of the Penal Code. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions

with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be some mis-fire or over-shooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy..."

In another decision of the Apex Court in case of State of Maharashtra and others (supra) it was observed thus :

"24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is

> necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use."

6. In the present case the allegation against the Applicant is of sale of illicit liquor on various dates from 24th to 26th December 2004. Thus, sell of illicit liquor by the Applicant was after the liquor tragedy in the jurisdiction of N.M.Marg Police Station took place in which large number of persons lost their lives. The said tragedy took place on 24th December 2004. Taking this fact into consideration and the law laid down by the Apex Court, it is very difficult to believe at this stage the lack of knowledge on the part of the Applicant that liquor which was sold at his den was poisonous. Reliance placed by the learned Advocate for the Applicant on

the order passed in Criminal Application No.2769 of 2005 will not help the Applicant. This Court granted bail to one accused Shiva in the said case for totally different reasons. What was found in the said case was that even according to the case of the prosecution, poisonous liquor sold in the den run by the principal accused Ravindra Goregaonkar was not supplied by the said accused Shiva. The material on record indicated that the said accused Shiva had knowledge that something has gone wrong with the liquor supplied in the den of Ravindra Goregaonkar and he advised the said Ravindra to destroy the liquor. This Court confirmed the order passed by the Sessions Court granting bail to the persons who were mere transporters of the illicit liquor. This Court also confirmed the order passed by the Sessions Court where the role of the accused persons was of serving liquor in the den of the said Ravindra. The said persons were mere employees of the said Ravindra. Therefore, in my view, no reliance can be placed on the said order passed by this Court in support of the Applicant.

7. There is no reason to take a different view which is taken by the Sessions Court. Hence Application is rejected.

JUDGE